

# Health Reform Provisions Usher in New Era of Enforcement for HIPAA Standard Transactions

A year after health reform's enactment, the Centers for Medicare and Medicaid Services is well on the way to implementing the law's detailed new requirements for health care transactions — and adopting an aggressive new enforcement stance, especially toward health plans.

“Congress really got the message that we need to push harder” to streamline the HIPAA-standard transactions, CMS's Lorraine Tunis Doo told a recent conference. “They really wanted to make the standards uniform.”

To implement these provisions of the Patient Protection and Affordable Care Act, “we are going to be adopting a number of new standards and operating rules,” as well as “much more significant penalties for noncompliance, and a much more robust audit program,” said Doo, a senior policy advisor at CMS's Office of E-health Standards and Services.

CMS plans to issue interim final rules as soon as this summer, Doo said, on operating rules for the existing eligibility and claim status transactions, and on the long-delayed health plan identifier. Health plans and providers must comply with the operating rules by Jan. 1, 2013, and the identifier by Oct. 1, 2012, based on deadlines in the PPACA law itself.

Operating rules are being developed in a “rolling process” that begins with federal advisory committee

hearings and will culminate in required compliance certifications from health plans, Doo said. “If we don't have the breadth of engagement, these things will never work.” In particular, she added, the National Committee on Vital and Health Statistics “has a bigger role than they've ever had before” in analyzing the operating rule organizations and their products.


For most of the operating rules on eligibility query and claim status, NCVHS recommended adopting phases I and II of the voluntary rules already developed by the Council for Affordable Quality Healthcare's Committee on Operating Rules for Information Exchange. NCVHS did ask CAQH CORE to make certain “enhancements recommended by the industry,” Doo noted.

Health plans will be discouraged from using “companion guides” that conflict with the standards or operating rules. “Companion guides would be a more basic document, but we know they're not going to be eliminated completely,” Doo said.

The compliance certification process will beef up what has been very infrequent enforcement of HIPAA's electronic data interchange rules. As with the privacy and security rules, EDI enforcement was designed to be primarily complaint-based, but in this case CMS seldom even gets complaints, Doo said. “If we don't hear what the problems are, there's very little we can do.”

Health plans, providers and clearinghouses alike must comply with the new standards and operating rules, but PPACA's new enforcement mechanisms are directed at health plans. Later this year, CMS “will select plans at random and test transactions they'll be using,” Doo said. Plans will be required to certify compliance with the first set of standards, and their operating rules, by the end of 2013.

The new EDI enforcement regime will be developed in a separate set of rules, Doo said. Plans can be fined \$1 per covered life for every day their certification is late, and these penalties double for misrepresentation.

Such penalties could reach tens of millions per day for some large health insurers, according to Aetna's Jay Eisenstock. But while “the financial impacts are fairly significant,” he added, “I also think there's a lot of opportunity here” for health plans and providers alike. “When we started HIPAA, the big promise was administrative simplification and savings. I don't think we've realized that yet.” He and Doo spoke March 11 in Washington, D.C., at the 19th National HIPAA Summit. 

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